

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of	)	
	)	
Petitions for Declaratory Ruling Regarding	)	<b>MB Docket No. 09-13</b>
Public, Educational, and Governmental	)	
Programming	)	
	)	
Petition for Declaratory Ruling on	)	City of Lansing, Michigan
Requirements for a Basic Service Tier	)	CSR-8127
and for PEG Channel Capacity Under	)	
Sections 543(b)(7), 531(a) and the	)	
Commission's Ancillary Jurisdiction	)	
Under Title I	)	
	)	<i>ACM et al.</i>
Petition for a Declaratory Ruling That	)	CSR-8126
AT&T's Method of Delivering Public,	)	
Educational and Government Access	)	
Channels Over Its U-verse System Is	)	
Contrary to the Communications Act of	)	
1934, as amended, and Applicable	)	
Commission Rules	)	
	)	
Petition for Declaratory Ruling	)	City of Dearborn, Michigan <i>et</i>
Regarding Primary Jurisdiction	)	<i>al.</i>
Referral in City of Dearborn et al. v.		CSR 8128
Comcast of Michigan III, Inc. et al.		

**COMMENTS OF THE CITY OF ST. PETERSBURG, FLORIDA**

These Comments are filed by the City of St. Petersburg, Florida ("City"), in response to the Petitions of the Cities of Dearborn and Lansing, Michigan, and others, in order to inform the Commission regarding the value of the educational and governmental channels to the community and why it is vitally important that

cable system operators be prohibited from inhibiting public access to those channels.

### Educational and Governmental Channels in Our Community

St. Petersburg is a city with a population of 250,000. The cable operators serving the City are Bright House Networks (herein, "BHN") and Knology Broadband of Florida ("Knology"). BHN has provided cable service to city residents since 1989.

St. Petersburg owns and operates WSPF-TV, a low-power UHF television broadcast station having an FCC "Class A" broadcast license, used by the City as a local government access station. The station broadcasts 24 hours daily, seven days a week.

The residents of Pinellas County are also served by a governmental access channel operated by the Board of County Commissioners, educational channels operated by the School Board of the Pinellas County School System and St. Petersburg College, and two Public Broadcasting System stations, WEDU and WUSF, the latter operated by the University of South Florida. These Comments respond to the Petitions from the perspective of the City and its government access station.

St. Petersburg's government access station is extremely important to the residents of the City because it allows the public an opportunity to view its municipal government at work.

The station broadcasts approximately 13 city meetings live each month and produces an average of 40 hours of original programming each month with a potential reach of 120,000 television households. The programming includes live broadcasts of meetings of the City Council, the code enforcement board, the nuisance abatement board, and commissions having land use regulatory powers. The station also rebroadcasts the Florida Legislature, currently in session in Tallahassee, via a live satellite feed.

The station broadcasts emergency information relating to hurricanes and other severe weather alerts, police and fire emergencies, and other information promoting public health, safety and welfare. Other programming includes weekly,

monthly and quarterly series, city departments' feature programs, public service announcements, promos and the city bulletin board.

WSPF-TV has won national and state awards for the quality and community benefits of its programming. The awards include the National Heart Association's "Cardiovascular Communications Award" for a program entitled, "AED's - They Do Save Lives" (2003); a Telly Award for a program, "Making St. Petersburg Best" (2005); Communicator Awards in 2003 and in 2005 for programs on AED Defibrillators, A Tale of Two Cities, Sunshine City, Remembering Webb City, and District Highlights (Award of Excellence, 2003), and a program on the Mayor's Mentors (Crystal Award, 2005). The station won the Florida Government Communicators Association's Crystal Award for coverage of the Honda Grand Prix of St. Petersburg (2006).

St. Petersburg has negotiated franchises with two cable operators since 1989. The franchises were each transferred twice, with no unreasonable delays or difficulties. For nearly twenty years the city maintained a good working relationship with the operators.

The cable franchises require the cable operators to designate a cable channel for governmental use or, at St. Petersburg's option (which has never been exercised), provide up to twelve hours of air time for governmental use per week.

The franchises require the cable operators to provide the governmental access channel to all of the subscribers within the franchised area as part of the basic cable service offered by the cable operator.

Until December 11, 2007, BHN and its predecessors re-broadcast St. Petersburg's programming over cable channel 15 as part of the basic cable service provided to all of the subscribers within St. Petersburg.

### The Realignment of PEG Channels by BHN

On December 11, 2007, BHN unilaterally relocated the PEG access channels throughout the Tampa Bay Area from the analog channels to the lowest digital tier of service. As a result of the relocation, St. Petersburg's governmental access channel was moved from cable channel 15 to cable channel 615 and the other PEG channels are in the 600 series. From the consumer's point of view, the PEG

channels are now outside the range of the basic channels, and difficult or impossible to find and view.

BHN described the new digital channels as being within the “basic service tier” provided all subscribers. In reality, subscribers with analog television sets who lack the equipment necessary to access the digital tier of service have two choices. One is to upgrade from the basic service tier to the more expensive digital tier of service. The other choice is to obtain and use converter boxes for which BHN charges an additional fee, per box and per month, in order to continue having access to the PEG channels. The charges for the converter boxes are in addition to the basic service rate. These boxes are useful only for PEG channel access. The boxes must be requested, delivered and installed; they are not provided automatically.

BHN claims, among other things, that a Florida law, enacted in 2007, authorized BHN to move the PEG channels to the lowest digital tier. The Florida law substitutes state-issued certificates of franchise authority in place of local franchises, which are declared void if a cable operator applies for and is issued a state certificate.<sup>1</sup> Whether the Florida law is preempted by Federal law is outside the scope of the petitions in this case, but BHN did not obtain a state-issued certificate of franchise authority for Tampa or St. Petersburg until after it had relocated the PEG channels. To its credit, Knology, the City’s other cable operator, has not applied for or obtained a state certificate, and has not relocated the PEG channel out of the reach of its subscribers who lack the converter boxes necessary to view them.

#### The City’s Unsuccessful Attempt to Seek Judicial Relief

In response, the Cities of St. Petersburg and Tampa brought separate lawsuits against BHN in the United States District Court for the Middle District of Florida, Case Numbers 8:07-CIV-2105-T-S4-MSS and 8:07-CIV-2106-T-23-

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<sup>1</sup> Section 610.109, Fla. Stat., requires that the holders of state-issued certificates provide PEG channels. To the extent that the certificates are deemed to be “franchises,” 47 U.S.C. § 543(b)(7)(A) requires that the PEG channels “required by the franchise” be included in the basic tier of service and at the lowest reasonable rate. Thus, the Florida statute imposes upon Bright House the duty to continue providing access to the PEG channels to all of its subscribers through the basic tier of service at the lowest reasonable rate.

TBM, which were consolidated. The cities challenged the relocation of the PEG channels on the basis that the relocation and the requirement that subscribers pay a monthly fee for a converter box or upgrade to a more expensive digital service violated 47 U.S.C. § 543(b)(7)(A), which states in pertinent part:

(A) Minimum contents

Each operator of a cable system shall provide its subscribers a separately available basic service tier to which subscription is required for access to any other tier of service. Such basic service tier shall, at a minimum, consist of the following:

\* \* \* \* \*

(ii) Any public, educational, and governmental access programming required by the franchise of the cable system to be provided to subscribers.

In enacting 47 U.S.C. § 543(b)(7)(A), Congress stated its intent that PEG channels be provided to the public at the lowest reasonable rate as part of the basic service tier. Consistent with the intent of Congress, BHN may not charge its subscribers, who wish to view the PEG channels, a premium or monthly fee for a converter box, in addition to charging subscribers a monthly cost for the basic service tier. However, BHN effectively converted what was a single basic service tier, including the ability to view PEG channels, to two different tiers, one consisting of channels that can be received by some subscribers without additional expense beyond the basic service fee, and another for which some subscribers will have to pay an additional monthly fee in order to view the PEG channels.

The District Court for the Middle District of Florida did not agree with the position of the cities, and on December 12, 2008, the Court entered summary judgment for BHN. The decision was based on a finding that BHN is exempt from regulation under § 543(b)(7)(A), including any regulation of the content of the basic service tier or the fees charged for converter boxes, because (the Court said) this Commission has found that BHN is subject to “effective competition” in both St. Petersburg and in Tampa. The rationale was that rate regulation authority encompasses cable operator charges for equipment like converter boxes.

The cities did not appeal the court's decision, in part because of budgetary constraints and in part because the District Court for the Eastern District of Michigan had issued its order requiring the City of Dearborn and others to file a petition for a declaratory ruling with the FCC – that is, the Petitions to which these comments are addressed.

The City of St. Petersburg believes that reliance upon “effective competition” is misplaced for several reasons. One is that requiring access to the PEG channels without payment of additional consideration is not “rate regulation.” Another is that tying the requirement to provide PEG channels to markets without effective competition makes no sense. Congress did not intend that PEG channels be offered by cable operators simply as an extra feature to gain an advantage in a competitive market. The City doubts that this Commission intended that its finding with respect to effective competition in St. Petersburg and Tampa was intended to permit a cable operator to avoid what Congress has required with respect to PEG channel access by the public.

#### Harmful Effects of the Realignment on the City's Educational Station

The effect of the channel realignment was initially measured by complaints received in City Hall and by anecdotal stories such as the waitress who told an attorney for the City that she could no longer see him on television because “the cable company took the city channel away.”

The effect was measured more scientifically in the summer of 2008, when the City employed the services of an independent research firm to conduct an opinion survey among residents of St. Petersburg to gauge public awareness and viewership of WSPF-TV. The opinion survey was conducted as part of an evaluation of the station's effectiveness in terms of public awareness, market penetration, demographics and neighborhood viewership, public trust, program demand, and other matters relevant to the evaluation of the station.

Among other findings, the survey disclosed that the relocation of the City's government access channel from Channel 15 to Channel 615 had a negative impact on the station's viewership. More specifically, the Report of Findings stated that:

(a) Only two percent of BHN subscribers stated correctly that the City's government access channel can now be found on Channel 615.

(b) Although nearly three quarters (71%) of St. Petersburg households appear to subscribe to BHN Cable, slightly more than one-half (55%) said they can receive Channel 615, the new location for the City's government access channel. Thirty-one (31) percent of BHN customers said they cannot receive Channel 615. The rest were not sure.

(c) The move from Channel 15 to Channel 615 "may have hurt viewership of the City Channel considerably," because almost four in ten (38 percent) of BHN customers said they now watch the City's government access channel less frequently since the channel change.

(d) Twenty-one (21) percent of BHN customers said the change in the channel line-up required them to upgrade to a new digital cable box so they could watch the programs they wanted.

The opinion survey results are available on-line at:  
[http://www.stpete.org/stpete/WSPF\\_viewer\\_survey\\_results2008.pdf](http://www.stpete.org/stpete/WSPF_viewer_survey_results2008.pdf)

#### The Digital Transition will not affect WSPF-TV in the Foreseeable Future

The City's governmental access channel now broadcasts in analog format and the City does not plan to convert to digital broadcasting in the foreseeable future due to budgetary constraints.

BHN now carries analog programming by other television stations as part of the basic service tier, as it always has, and could have continued carrying the programming of WSPF-TV – and could continue to do so.


The realignment of WSPF-TV's programming to the digital tier means that a BHN customer, wishing to view the City's governmental programming, but lacking the necessary converter box, will have to disconnect the cable and connect an old-fashioned antenna in order to bring the programming in over the air waves. Is this progress? It certainly does not comply with the Congressional intent to make PEG programming available to the public at the lowest reasonable cost.

## CONCLUSION

In order to comply with the Congressional requirement that cable operators place PEG channels in the basic service tier for access by the public at the lowest reasonable cost, this Commission should require all cable operators, whether they are in a competitive market or not, to place all PEG channels in the basic service tier. A "basic service tier" should be defined as a tier of service which is readily accessible to all subscribers without any special actions by any subscriber and without any special equipment not necessary to view broadcast channels on the basic service tier, and without additional financial or other burdens on the subscriber.

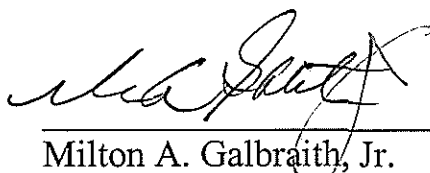
Respectfully submitted on this 6<sup>th</sup> day of March, 2009

**City of St. Petersburg, Florida**

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## CERTIFICATE OF SERVICE

I hereby certify that I have on this 6<sup>th</sup> day of March, 2009, served a copy of the foregoing Comments on the following persons via first class U.S. mail: Teresa S. Decker, Esquire, Varnum Law Firm, Counsel for City of Lansing, at Bridgewater Place, P.O. Box 352, Grand Rapids, MI 49501-0352; Brig Smith, Esquire, City Attorney, City of Lansing, 124 West Michigan Avenue, Lansing, MI 48933; James N. Horwood, Esquire, Counsel for ACM, et al., Spiegel & McDiarmid LLP, 1333 New Hampshire Avenue, N.W., Suite 200, Washington, D.C. 20036; Joseph Van Eaton, Esquire, Miller & Van Eaton, P.L.L.C., Counsel for City of Dearborn, 1155 Connecticut Avenue, N.W., Suite 1000, Washington, D.C. 20036-4306; Debra Walling, Esquire, Corporation Counsel, City of Dearborn, 13615 Michigan Ave., Suite 8, Dearborn, MI 48126; and Holly Saurer, Media Bureau, Room 4-A734, 445 12th Street, S.W., Washington, D.C. 20554.



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